

EMPLOYER STATUS DETERMINATION

The Eureka Springs & North Arkansas Railway Co.

This is the determination of the Railroad Retirement Board concerning the status of Eureka Springs & North Arkansas Railway Co. (ES&NA) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

Information about ES&NA was provided by Robert L. Dortch Jr., the president of the ES&NA. Mr. Dortch stated that ES&NA began operations April 1, 1981 with tracks that were two (2) blocks long in length. At present, the tracks are two miles in length. The railway leaves the Eureka depot, turns at the end of the tracks and returns to the station. Mr. Dortch states that ES&NA does not interchange with any other railway companies. He stated that the nearest railway company, Arkansas and Missouri Railroad Co., is sixteen (16) miles away from ES&NA.

Mr. Dortch stated that ES&NA is a tourist railroad which operates six to seven months out of the year. Presently, its service component consists of an intra-state tourist railway, offering an excursion and dining train. In addition, Mr. Dortch stated that ES&NA has never been involved with the ICC, probably because the company only operates intra-state.

Section 1(a)(1) of the RRA defines an "employer" to include:

- (i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49 [the Interstate Commerce Act].

Section 1 of the RUIA contains the same definition.

Subchapter I of chapter 105 of Title 49 is the portion of the Interstated Commerce Act which sets forth the provisions governing the jurisdction of the Interstate Commerce Commission (ICC) over rail transportation. It provides in pertinent part that the ICC has jurisdiciton over transportation by rail carrier to the extent that the transportation is in the United States and is interstate (49 U.S.C. §10501 (a)(2)(A)). That statute provides specfically in pertinent part that:

- (b) The Commission does not have jurisdiction under subsection (a) of this section over--
 - (1) the transportation of passengers or property, or the receipt, delivery,

storage, or handling of property,
entirely in a State (other than the
District of Columbia) and not

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transported between a place in the United
States and a place in a foreign
country...[49 U.S.C. §10501 (b)(1)].

In this case, ES&NA is a carrier by rail, since it operates a passenger railway. However, ES&NA does not transport passengers from a place in one State to a place in another State. Rather, it provides excursion service between two points entirely within one State. ES&NA does not interchange with any railroad, and does not "through-ticket" any passengers or freight onto any other rail carrier. Therefore, ES&NA's operation of its tourist railroad is not subject to the ICC's jurisdiction.

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